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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD W. CHO,

Defendant and Appellant.

B213364

(Los Angeles County
Super. Ct. No. KA 083290)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Buckley, Judge. Affirmed.

Law Offices of John F. Schuck and John F. Schuck for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

The information charged Appellant Richard W. Cho with seven prior convictions and with one count of robbery. Appellant pleaded guilty to robbery.¹ The trial court found two prior convictions true and denied appellant's motion brought under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) to strike his prior convictions. Appellant was sentenced to 25 years to life; this sentence was enhanced by 10 years, i.e., five years for each of the two prior convictions. This appeal is limited to sentencing issues.

DISCUSSION

1. There Is Adequate Proof of the Prior Convictions

Appellant was sentenced on December 24, 2008. It appears that the documents used to prove the two prior convictions were misplaced some time after the sentencing hearing. On June 11, 2009, in response to appellant's motion to augment the record with these documents, we ordered the trial court to settle the record. Specifically, the documents that were missing showed a federal robbery conviction and a prior felony conviction in a California state court in Los Angeles.

The court held a hearing to settle the record on July 14, 2009. Defense counsel stated for the record a stipulation that documents reflecting a 1981 California state conviction for robbery, case No. A451983, and a 1978 federal robbery conviction had been previously admitted into evidence during the December 24, 2008 hearing. These documents are now in the appellate record.

Appellant contends that while the foregoing documents were marked as exhibits during the July 14, 2009 hearing, "the parties did not stipulate or agree that these State conviction documents were ever presented to or reviewed by the trial court at the December 24, 2008 court trial." This is not correct. Defense counsel stated at the July 14, 2009 hearing that the foregoing documents "were the items that were referenced at the December 24th hearing."

¹ Appellant presented a note stating that he had a gun to a bank teller who handed him \$490.

While there is some ambiguity in the word “referenced,” defense counsel obviously understood on July 14, 2009, what was at stake, which was whether the sentencing court had before it on December 24, 2008, documentation showing the two prior convictions. Understanding this, defense counsel entered into the stipulation we have described. This can only mean that the defense agreed that the sentencing court was at some point on December 24, 2008, in possession of the documents showing the prior convictions.

Appellant also contends that the trial court did not “make any express finding regarding the truth” of the California prior. The trial court’s oral pronouncement was that appellant was sentenced 25 years to life and to “an additional five years for each of the prior convictions” for a total of 35 years to life. The court clearly found the California prior to be true, otherwise it would have imposed five and not 10 additional years.

In his reply brief, appellant claims that the stipulation that the documents showing the two prior convictions were before the court during the sentencing hearing on December 24, 2008, is “wrong” because “no such evidence was ever submitted.” As *defense counsel stipulated* on the record on July 14, 2009, that the documentation was before the court on December 24, 2008, appellant cannot now claim the contrary.

We are satisfied that there is substantial evidence supporting the trial court’s finding that appellant was in fact convicted of the two foregoing prior convictions.

2. The Trial Court Was Correct in Denying the Romero Motion

We are not persuaded by appellant’s argument that his *Romero* motion should have been granted.

Appellant states he is not within the spirit of the three strikes law because that law is intended “for recidivist offenders who repeatedly commit violent felonies threatening the public at large.” That is a rather accurate characterization of appellant who pleaded guilty in this case to a bank robbery and has been convicted before of the same offense. Bank robbery is a violent felony that imperils the public. While appellant’s criminal record, which he concedes is extensive, may well have been, as appellant claims, the result of drug addiction, the choices that he made over a span of years show that he is a

dangerous, recidivist criminal. Unfortunately, the trial court had it right when it observed that “I see a pattern that will not be broken.”

Appellant contends in his reply brief that the two prior convictions were remote in time and that this justifies his *Romero* motion. Between 1981 and 2002, appellant committed a crime of some sort every second or third year. Remoteness of a prior conviction is a factor only if the defendant has led a crime-free life between the prior and current conviction (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813), which is not the case here.

The trial court’s order denying the *Romero* motion was clearly within the scope of its discretion. Far from seeing an abuse of that discretion, which is the test on appeal (*People v. Jordan* (1986) 42 Cal.3d 308, 316), we agree with the trial court; appellant is clearly a person to whom the three strikes law was intended to apply. (See generally *People v. Williams* (1998) 17 Cal.4th 148, 161.)

DISPOSITION

The judgment is affirmed.

FLIER, J.

We concur:

RUBIN, Acting P. J.

MOHR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.